*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.9909 OF 1997

% 15-02-2005

1. Rachamalla Amruthamma w/o Anandam, R/o 5-3-174, Ahmedpura,

Karimnagar.

2. Rachamalla Ravinder S/o Anandam, R/o 5-3-174, Ahmedpura,

Karimnagar. .. Petitioners

And

$ 1. The Government ofA.P.Re. by Secretary, Irrigation, CAD

(PW) Secretariat, Hyderabad.

2. The Special Collector, SRSP & SLBC, Tarnaka, Hyderabad.

3. The Special Dy.Collector, Land Acquisition Unit, LMD Colony, Karimnagar.

… Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri B.Prakash Rao

^ Counsel for respondents : G. P. for Land Acquisition

?CASES REFERRED :

[1] AIR 1956 PATNA 104

2. AIR 1961 PATNA 150

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 9909 of 1997

Between:

1 Rachamalla Amruthamma, W/o. Anandam.
R/o. 5-3-174, Ahmedpura, Karimnagar.
2 Rachamalla Ravinder, S/o. Anandam.
R/o. 5-3-174, Ahmedpura, Karimnagar.

..... PETITIONERS

AND

1 The Govt. of A.P., Rep. Secretary,
Irrigation, CAD (PW), Secretariat, Hyderabad.
2 The Special Collector, SRSP & SLBC,
Tarnaka, Hyderabad.
3 The Special Dy.Collector, LAnd Acquisition Unit,

LMD Colony, Karimnagar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more in the nature of Writ of Mandamus declaring the proceedings of R-2, in file No.D3/4546/95 dated 04/02/1997 as bad, illegal and void and set aside the same and be pleased to pass.

Counsel for the Petitioner: MR.C.RAMESH SAGAR

Counsel for the Respondent : GP FOR LAND ACQUISITION

The Court made the following :

O R D E R:

1. The writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the action of the 2nd respondent-Special Collector, SRSP & SLBC, Tarnaka, Hyderabad, in issuing proceedings No. D3/4546/95 dated 04-02-1997 as illegal and arbitrary.

2. The impugned order dated 04-02-1997 issued by the 2nd respondent-Special Collector, is extracted hereunder:

> ....."I invite your attention to the reference cited, wherein the Special Dy.Collector, LA Unit, ID colony, Karimnagar informed to follow the instructions issued in this office Lr.No.D3/4546/95 dt.4-1-1997 a copy of this letter is enclosed. Please refer the matter to the Court and deposit the cheque in the court to avoid litigation in future. Also please report the names of the officers responsible for not referring the matter to Court for all these days...."

3. In the affidavit filed in support of the writ petition it is stated that the 1st and 2nd petitioners are the daughter and grand-son respectively, of one Gunti Rajaiah. The said Rajaiah executed a registered will, dated 09-08-1983 vide Doc.No.16/83, bequeathing the lands in Survey Nos.188, 189, 273, admeasuring to an extent of Ac.7.03 gts and also a house bearing No.4-25 situated at Mannampally village, Thimmapur Mandal, and another house bearing no.2-68 situated at Nustulpur village and another house bearing No.5-3-

97 situated in Ahmedpura locality, Karimnagar in favour of both the petitioners. The said Gunti Rajaiah died

on 10-03-1986. After his death, one Kolipaka Alias Boggula Pochamma claiming to be the 2nd wife of the said Gunti Rajaiah, set up a simple will deed dated 12-02-1986 purporting to have been executed by late Gunti Rajaiah in respect of the house bearing No.2-68 of Nustulpur. The petitioners filed O.S.No.583 of 1986 before the learned District Munsif, Karimnagar, seeking perpetual injunction in respect of all the properties covered by the registered will deed dated 09-08-1983. The learned District Munsif, Karimnagar, having considered the facts and circumstances of the case held that Gunti Rajaian executed the will deed dated 09-08-1983 in a sound and disposing state of mind and that the another will deed dated 12-02-1986 set up by the said Kolipaka Pochamma was found to be not a genuine document. Thereupon, the said Kolipaka Pochamma carried the matter before the II Additional District Judge, in A.S.No.49 of 1993 wherein the learned II Addl. District Judge, Karimnagar by Judgment dated 06-03-1995 dismissed the appeal confirming the Judgment of the Court of first instance and therefore, the same had attained finality.

4. It is stated that under Sri Rama Sagar Project No.366, along with several other properties, the house in question possessed by the petitioners herein was also acquired. In view of the same, several representations were made to the respondents. It is also stated that the petitioners submitted an application as long back as on 01-02-1988 claiming that they were entitled to the entire compensation payable to the house in question. Finally, the petitioners made a representation on 20-07-1993 to the 1st respondent marking copies to the 2nd and 3rd respondents reiterating their claim for the said compensation. As there was no response from the respondents, the petitioners again made applications on 30-9-1993, 27-1-1994, 10-4-1995 and 15-11-1995 wherein they specifically pointed out as to the registered will deed which had been accepted by the Civil Court, and also rejection of the alleged will deed claimed by other parties. Therefore, they are entitled for the said compensation. Subsequently, the 2nd respondent-Special Collector addressed a letter No. D3/4546/95 dated 23-4-1996 seeking legal opinion from the Government Pleader. The Government Pleader, in turn, gave an opinion stating that as the civil Court had already upheld the claim of the petitioners on the will deed, the compensation amount

can be paid to the petitioners. Thereupon, the 3rd respondent-Special Collector addressed a letter No S/114/94/1 dated 24-12-1996 to the 2nd respondent, by supporting the opinion of the Government Pleader, stated that no purpose will be served in sending the matter to the civil court under Section 30 of Land Acquisition Act 1894 (for short 'the Act') for adjudication of rights of the parties once again. However, to the surprise of the petitioners, 2nd respondent-Special Collector through the impugned proceedings, to avoid future litigation, requested to refer the matter to the Civil Court and deposit the amount in this regard. The grievance of the petitioners is that even though their claim was upheld by the competent Civil Court, which had attained finality, the 2nd respondent again issued the impugned proceedings. Aggrieved by the same, the present writ petition had been filed.

5. In the counter affidavit filed by the 3rd respondent-Special Deputy Collector, L.A.Unit LMD Colony, Karimnagar, it is stated that the house in question had been notified in the names of i) Smt. Pambala Pochamma ii) Sri Pambala Bhoomaiah iii) Smt Pambala Manemma and iv) Smt. Rachamalla Amruthamma w/o Anandam as owners in A.P.Gazettee No. 3 dated 11-01-1994 for which the concerned Executive Engineer had furnished an estimation for Rs.1,20,523 including value of drinking water well through Project No.366. It is also stated that the said Pambala Pochamma as well as the 1st petitioner herein filed a dispute petition requesting to pay the compensation for the above said structure individually. The then Land Acquisition Officer passed an award No. 14/93-94 dated 31-03-1994 for an amount of Rs.1,56,683/- including 30% solatium and 12% additional market value and the same was referred to the Learned Sub Judge, Karimnagar under Section 30 of the Act by depositing the said amount in the civil court vide cheque No. 208532

dated 31-03-1994. It is stated that after the award was passed, the 1st petitioner herein filed an application along with a copy of the order in A.S.No. 49 of 1993 dated 6-3-1995 stating that the learned II Additional District Judge, Karimnagar directed the authorities to pay the compensation to her only in respect of the house in question. To clarify the ambiguity, the respondents vide Letter No.D/114/94 dated 17-5-1996 requested the Government Pleader to issue legal opinion in this regard. The Government Pleader in turn gave legal opinion on 11-12-1996 stating that the compensation may be paid to the petitioners herein

after obtaining two independent sureties. In view of the same, the 2nd respondent-Special Collector, SRSP issued the impugned proceedings with a view to avoid legal litigations. Accordingly, an amount of Rs.1,56,683/- vide cheque No.162645 dated 17-06-1997 had been deposited in the Civil Court, Karimnagar under the Act by cancelling the earlier cheque no.208532 dated 31-3-1994 as time barred.

6. Heard Sri Ramesh Sagar, the learned counsel representing the writ petitioner and the learned Government Pleader for Land Acquisition.

7. The main grievance ventilated by the learned counsel representing the writ petitioners, Sri Ramesh Sagar is that though the petitioners were successful parties before the competent Civil Court and the same had attained finality, the decision taken by the 2nd respondent-Special Collector, SRSP stating that the matter be referred to the competent Civil Court again under Section 30 of the Act cannot be sustained. The learned counsel had also taken me through the letter dated 24-12-1994, wherein the 3rd respondent-Special Deputy Collector opined that as the said Judgment had attained finality and sufficient material in this regard also had been produced, the compensation amount can be paid to the petitioners. In support of his contention, the learned counsel also placed reliance on a decision reported in the case of **CHANDRESHWARI PRASAD NARAIN DEO AND OTHERS V. STATE OF BIHAR AND ANOTHER ()** and another decision reported in the case of **SUDHANSU KUMAR GHOSE AND ANOTHER V. LAND ACQUISITION OFFICER, PATNA ()**

8. Per contra, the learned Government Pleader for Land Acquisition submits that at the time of award enquiry, Sri Pambala Pochamma w/o Rajaiah as well as the 1st petitioner herein raised a dispute relating to payment of compensation in relation to the structure individually. Under these circumstances, 2nd respondent-Special Collector is well justified in issuing the impugned order.

9. I have perused the material available on record and the order impugned as well as the cited decisions.

10. In view of the rival contentions raised by both the learned counsel, it is pertinent to refer to Section 30 of the Act, which deals with the dispute relating

to the apportionment of compensation, and the same is extracted hereunder:

SECTION 30 OF THE ACT:

> **Dispute as to apportionment**: When the amount of compensation has been settled under Section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

11. As observed from the decision cited supra (2) a Division Bench of Patna High Court while dealing with the issuance of writ of certiorari and the aspect of dispute relating to apportionment of compensation under Section 30 of the Act held that the existence of a dispute as regards apportionment of compensation is a question of jurisdictional fact, and unless there is such a dispute existing, the Land Acquisition Officer has no authority or jurisdiction to make a reference to the civil court under Section 30 of the Act where the jurisdiction of an administrative authority depends upon a preliminary finding of fact, the High Court is entitled, in a proceeding for a writ of Certiorari, to determine by its independent Judgment whether or not that finding of fact is correct.

12. As seen from the affidavit filed in support of the petitioners, no doubt, along with several other properties, the house in question was also acquired under Sri Ramsagar Project No.366. It is evident that basing on the opinion of the Government Pleader, the 3rd respondent vide letter dated 24-12-1996 declared that the compensation amount can be given to the petitioners. But afterwards, the respondents changed their opinion and decided to refer the matter again to the competent civil Court under the Act, even though the Judgment of the appellate Court had attained finality. It is also pertinent to note that several representations were made in detail to the 2nd respondent in this regard but it seems that the respondents had not taken any action on the same. The stand taken by the respondents in the counter affidavit is that after obtaining legal opinion of the Government Pleader, they decided to make payments to the writ petitioners. Be that as it may, the fact remains that at a particular point of time the respondents changed their decision and decided to refer the matter again to the competent Civil Court under the Act with a view to avoid further litigations and issued impugned proceedings. It is also necessary to note that no steps

were taken to implead the said Pambala Pochamma who had been an unsuccessful party before the civil Court, as a party to the present writ petition. Evidently, the Judgment of the appellate Court had attained finality and hence perhaps she is not impleaded as a party in the present writ petition.

13. As per Section 30 of the Act whenever there is a dispute regarding apportionment of compensation, the matter has to be referred to the decision of the Court by the Collector. Whereas in the instant case, absolutely, there is no dispute relating to apportionment of compensation.

14. In the above facts and circumstances of the case and in view of the provisions under section 30 of the Act the issuance of the impugned proceedings definitely cannot be sustained for the reason that there is no dispute relating to the apportionment of compensation since the other party had been an unsuccessful party before the competent civil court and hence the said question need not be reagitated again under Section 30 of the Act. Hence viewed from any angle, the writ petitioners are bound to be succeeded.

15. Accordingly, the writ petition is allowed. Costs quantified at Rs.2,500/- payable by the respondents to the petitioners.

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P.S.NARAYANA, J

15-02-2005

MJL/*

LR copy to be marked.

Memorandum of Costs

Writ petition No.9909 of 1997

Petitioner's ( )

Rs. Ps.

Stamp used for the Writ petition … 100.00

Stamp of Vakalatnama … 005.00

Stamp on enclosures … NIL

Advocate's Fees … NIL

Batta and Postage … 27.00

Total … 132.00

Quantified by the Court … 2500.00

The respondents to pay a sum of Rs. Two thousand five hundred only to the petitioners towards costs of this writ petition as quantified by this Court.

To

1. One fair copy to the Hon'ble Justice P.S.Narayana

(for his Lordships kind perusal)

2. The Govt. of A.P., Rep. Secretary,
Irrigation, CAD (PW), Secretariat, Hyderabad.

3. The Special Collector, SRSP & SLBC,
Tarnaka, Hyderabad.
4. The Special Dy.Collector, LAnd Acquisition Unit,
LMD Colony, Karimnagar.

5. 2 CCs to G.P. for Land Acquisition, High Court buildings, Hyderabad.

6. The Under Secretary, Union of India, Ministry of Law, Justice and Company

Affairs, New Delhi.

7. The Secretary, A.P.Advocates Association, Library, High Court of A.P.

Hyderabad.

8. 8 L.R.Copies.

9. 2 CD copies.